

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MULTI-VET LTD.,

**Plaintiff and
Counterclaim Defendant,**

V.

PREMIER PET PRODUCTS, LLC,

Defendants and Counterclaim Plaintiff.

Civil Action No. 08-cv-03251

Declaration of Thanna Vickerman in Support of Premier's Motion for a Preliminary Injunction

**DECLARATION OF THANNA VICKERMAN IN SUPPORT OF DEFENDANT’S
MOTION FOR A PRELIMINARY INJUNCTION**

I, Thanna Vickerman, do hereby state as follows:

1. My name is Thanna Vickerman. I work for Marksmen, a worldwide industry leader in intellectual property investigations and acquisitions. I have personal knowledge of the facts stated in this declaration.

2. I submit this declaration to provide fact relevant to Premier's motion to ask this Court to prohibit any further sale by Plaintiff/Counterclaim Defendant Multi-Vet, Ltd. ("Multi-Vet") of its anti-bark collar in the United States under the name GENTLE SPRAY and in Premier's GENTLE SPRAY packaging until there can be a final

adjudication of legal dispute between Premier and Multi-Vet. By the term "GENTLE SPRAY," I mean to refer to the name and word mark GENTLE SPRAY. By the term "Premier's GENTLE SPRAY packaging," I mean to refer to packaging with the golden retriever image, an arc and contrasting blue and purple colors.

3. At Premier's request, I instituted an independent investigation of Multi-Vet, Ltd.'s advertising sales of its anti-bark collars.

4. I discovered that at least as early as May 30, 2008, Multi-Vet was advertising and selling an anti-bark collar under the name GENTLE SPRAY and in Premier's GENTLE SPRAY packaging over the internet at a number of internet cites;; www.entirelypets.com; www.thehungrypuppy.com; www.dogexplorer.com; www.inovago.com; www.snrpetsupplies.com; www.healthypets.com. A true and correct copy of the healthypets.com website showing advertisement of the Multi-Vet GENTLE SPRAY product on May 23, 2008 is attached hereto as an example of the internet presence as **Exhibit A**.

5. I searched for "Gentle Spray" on the internet website www.amazon.com. The search yielded three pages of results. A true and correct copy of the search results is attached hereto as **Exhibit B**.

6. In viewing the search results, I observed the Premier name, the Multi-Vet name, products, Premier's GENTLE SPRAY name, Premier's GENTLE SPRAY packaging and consumer reviews for the products where the Premier and Multi-Vet product names, pictures and reviews are all confused. For example, I clicked on the search result "Premier Gentle Spray Citronella Anti-Bark Collar," and a Multi-Vet branded GENTLE SPRAY product appeared. This result also contains a customer

review from September 24, 2007. The Multi-Vet Gentle Spray product was just released in May 2008, so the customer review has confused the two products. A true and correct copy of these aspects of the search results is attached hereto as **Exhibit C**.

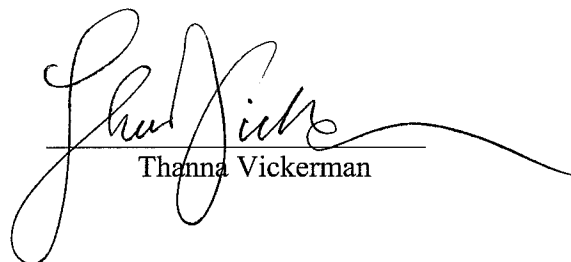
7. In the course of the investigation, I sought and successfully purchased a Multi-Vet branded GENTLE SPRAY product from our offices in the United States, which was delivered to our offices in the United States. Digital photographs of the shipping box and label were made for Marksmen's files. The container was then opened to confirm the integrity of my order. The contents of the package consisted of the Multi-Vet branded GENTLE SPRAY product, a receipt and two product flyers. Digital photographs of the product and a copy of the invoice were made for Marksmen's files. A true and correct copy of the digital photographs taken of the Multi-Vet branded GENTLE SPRAY product is attached hereto as **Exhibit D**.

8. At Marksmen, we earn a customary fee for our investigatory services, which in this case is unlikely to exceed \$2000.

9. If called upon, I am able to testify to the matters stated herein.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

9 June 2008
Date


Thanna Vickerman


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Product Search

1 (800) 889-9

Flea and Tick

- Advantage Flea Control for Dogs
- Advantage Flea Control for Cats
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- Frontline Top Spot For Cats
- Frontline PLUS for Dogs
- Frontline PLUS for Cats
- Program Flea Control for Dogs
- Program Flea Control for Cats
- K9 ADVANTIX

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Multivet Gentle Spray Citronella Anti-Bark Co


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Item #: PREMIERGSC

Item Rating: [Rate this item](#)

Regular Price: \$85.99

Sale Price: **\$49.99**Enter Quantity:
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Description

Customer Reviews



SHIPS GROUND. Please allow 4 to 7 days for your order to arrive.

Immediately and humanely stop problem barking. This bark collar is designed for any breed of dog that is at least 6 months old and weighs 6 lbs. or more.

The Multivet Gentle Spray citronella Anti-Bark Collar is the most effective and humane solution for nuisance barking. Stop the problem barking! Recommended by leading veterinarians, behaviorists, and trainers. Gentle Spray uses ultrasonic technology to deliver a harmless burst of citronella spray that interrupts the barking. **It's two times more effective than shock collars.** The spray stimulates the dog's senses - he sees it, hears it, smells it and feels it.

Includes:

Exhibit A

- anti-bark device (weighs 2.5 oz)
- citronella refill
- adjustable nylon collar
- 6-volt battery
- detailed instructions and lifetime warranty.



Customer Testimonial

We got one of these for our barker because a behaviorist advised us you can't argue barker when s/he's doing it. It works great and the dog smells terrific. Seriously, we know he will be in one of those situations where he is likely to bark, such as straining or a visit to a dog-friendly beach. The darn things are super-expensive, BUT **A**) they collar and **B**) they never fail, unlike dog whistles which are only useful on some dogs. while your dog is sitting on your lap wearing the collar, or you will get a dose, too.

E.Z.

[Save even more, buy the value pack](#)

Customers Who Bought This Item Also Bought

		NEW! Aids
Multivet Spray Commander Remote Trainer	Premier Gentle Leader Calming Cap	Price: \$
Price: \$175.99	Price: \$19.95	Sale Price
Sale Price: \$116.99	Sale Price: \$15.99	

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Amazon.com "Gentle Spray"

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- 


Gentle Spray Citronella Refill 2 Pack by Premier
[Buy new:](#) **\$14.60** [2 Used & new](#) from **\$14.60**
In stock. Processing takes an additional 2 to 3 days.
★★★★★ (1)
Home & Garden: See all 24 items
- 


Premier Gentle Spray Anti-Bark Dog Collar by Premier (Jul 11, 2006)
[Buy new:](#) ~~\$99.99~~ **\$32.89** [10 Used & new](#) from **\$32.89**
In Stock
★★★★☆ (203)
Home & Garden: See all 24 items
- 

Gentle Spray Refill - 3 Pack by Premier
[Buy new:](#) ~~\$26.97~~ **\$21.39** [2 Used & new](#) from **\$21.39**
In Stock
★★★★★ (3)
Home & Garden: See all 24 items
- 

Gentle Spray Replacement Battery 2-Pack by Premier
[Buy new:](#) **\$5.69** [3 Used & new](#) from **\$5.69**
In Stock
★★★★★ (2)
Home & Garden: See all 24 items
- 

Gentle Spray Value Pack by Premier
[Buy new:](#) **\$65.93**
In stock. Processing takes an additional 2 to 3 days.
Everything Else: See all items
- 

PREMIER PET PRODUCTS GSBAT6VCLIPSTRIP GENTLE SPRAY BATTERY CLIP STRIP OF 6 RETAIL by Premier
[Buy new:](#) **\$9.98** [3 Used & new](#) from **\$9.98**
In Stock
Electronics: See all 2 items
- 

PREMIER PET PRODUCTS GSVIRFENCE GENTLE SPRAY VIRTUAL FENCE by Premier
[1 Used & new](#) from **\$159.99**
Office Products: See all items
- 

Premier Batteries for Gentle Spray products 6 volt 2 per pack by Premier (Jul 11, 2006)
[Buy new:](#) ~~\$9.98~~ **\$6.79** [4 Used & new](#) from **\$6.79**
In Stock

Exhibit B



★★★★★ (3)

Home & Garden: See all 24 items

9.



Premier Gentle Spray Anti-Bark Collar STARTER KIT by Premier Pet Products

Buy new: ~~\$145.99~~ **\$59.93**

In stock. Processing takes an additional 2 to 3 days.

★★★★★ (7)

Home & Garden: See all 24 items

10.



Help! I'm Barking and I Can't Be Quiet: A pet parenting guide by Daniel Q. Estep and Suzanne Hetts (**Paperback** - Sep 30, 2004)

Buy new: **\$19.95** **2 Used & new** from **\$9.99**

Get it by **Tuesday, Jun 10** if you order in the next **3 hours** and choose one-day shipping.

★★★★★ (1) Eligible for **FREE** Super Saver Shipping.

Excerpt - page 49: "... of anti-bark collar is warranted, we usually recommend The Premier **Gentle Spray** Collar®. It is available at www.AnimalBehaviorAssociates.com. ..."

Surprise me! See a random page in this book.

Books: See all 354 items

11.



Gentle Spray Citronella Refill by Premier

Buy new: **\$7.02** **4 Used & new** from **\$7.00**

In stock. Processing takes an additional 2 to 3 days.

Home & Garden: See all 24 items

12.



PREMIER GENTLE SPRAY CITRONELLA ANTI-BARK COLLAR by Premier

Buy new: **\$36.99** **4 Used & new** from **\$36.99**

In Stock

★★★★★ (2)

Home & Garden: See all 24 items

13.



Premier Gentle Spray Bark Control Citronella Refill by Premier Pet

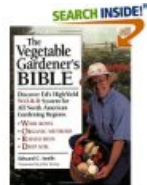
Buy new: **\$7.63** **3 Used & new** from **\$7.63**

In Stock

★★★★★ (2)

Home & Garden: See all 24 items

14.



The Vegetable Gardener's Bible: Discover Ed's High-Yield W-O-R-D System for All North American Gardening Regions by Edward C. Smith (**Paperback** - Feb 15, 2000)

Buy new: ~~\$24.95~~ **\$16.47** **44 Used & new** from **\$14.95**

Get it by **Tuesday, Jun 10** if you order in the next **3 hours** and choose one-day shipping.

★★★★★ (48) Eligible for **FREE** Super Saver Shipping.

Excerpt - page 95: "... Y-shaped, **gentle spray** that's easy on the plants and the soil while covering ..."

Surprise me! See a random page in this book.

Books: See all 354 items

15.



2 Premier Gentle Spray Citronella Anti Bark Refill NEW by Premier Pet Products

1 Used & new from **\$18.99**

Home & Garden: See all 24 items

16.



GENTLE SPRAY BATTERY CLIP STRIP OF 6 RETAIL GSBAT6VCLIPSTRIP by PREMIER PET PRODUCTS

Currently unavailable

Health & Personal Care: See all 5 items

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[Premier Pet Products](#)

www.Litterboy.com **Gentle Spray** Collar, SpraySense Easy Walk Harness, Busy Buddy Toys

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PREMIER GENTLE SPRAY CITRONELLA ANTI-BARK COLLAR

Other products by [Premier](#)

★★★★☆ ☒ (2 customer reviews)

Price: **\$36.99**

Special Offers Available

In Stock.

Ships from and sold by [Happy Dog Place](#).

4 used & new available from **\$36.99**

\$36.99 + \$8.00 shipping
In Stock. Ships from and sold by **Happy Dog Place**

Quantity: 1

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In Stock

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In Stock

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In Stock

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Buy this item with [Premier Gentle Spray Bark Control Citronella Refill](#). Premier Pet today!



+



Buy Together Today: \$44.62

[Add both to Cart](#)

Customers Who Bought This Item Also Bought



[Premier Gentle Spray Anti-Bark Dog Collar](#)

★★★★☆ (203) **\$32.89**



[Premier Batteries for Gentle Spray products 6 volt 2 per pack](#)

★★★★☆ (3) **\$6.79**



[Petsafe 6-Volt Lithium Battery, Set of 2](#)

★★★★☆ (38) **\$7.55**



[Gentle Spray Replacement Battery 2-Pack](#)

★★★★☆ (2) **\$5.69**



[Premier Gentle Spray Bark Control Citronella Refill](#)

★★★★☆ (2) **\$7.63**

Product Features

- NEW MODEL WITH CONVENIENT ON/OFF SWITCH!
- Anti-Bark Device (weighs approximately 2.5 oz. and can be worn by dogs 6 lbs. and over)
- Adjustable Nylon Collar
- One 6-Volt Alkaline Battery
- Detailed Instructions

Special Offers and Product Promotions

- Receive 1 [Bag Dispenser with Refill](#) free when you purchase \$75.00 or more of Qualifying Items offered by Happy Dog Place. [Here's how](#) (restrictions apply)

Product Details

Shipping Weight: 2 pounds ([View shipping rates and policies](#))

ASIN: B000QC470Q

Average Customer Review: ☒ (2 customer reviews)

Amazon.com Sales Rank: #47,632 in Home & Garden (See [Bestsellers in Home & Garden](#))

Popular in this category: ([What's this?](#))

Exhibit C

#34 in [Home & Garden](#) > [Pet Supplies](#) > [Training & Behavior Aids](#) > [Barking Deterrents](#)

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Product Description

Product Description

Immediately and humanely stop problem barking. This bark collar can be used with any breed of dog that is at least 6 months old and weighs 6 lbs. or more. The Gentle Spray citronella Anti-Bark Collar is the most effective and humane solution for nuisance barking. Stop the problem barking! Recommended by leading veterinarians, behaviorists, and trainers. Gentle Spray uses patented SprayLogik technology to deliver a harmless burst of citronella spray that interrupts your dog's barking. It's two times more effective than shock collars. The spray works on four of the dog's senses - he sees it, hears it, smells it and feels it. Includes: anti-bark device (weighs 2.5 oz) citronella refill adjustable nylon collar 6-volt battery detailed instructions and lifetime warranty

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[Spray Bark Control Collar](#)

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[Petsafe PUBS-300 UltraLight Sonic Bark Collar Attachment](#)

★★★★★ (12) **\$33.58**

Suggested by 1 customer



[Premier Gentle Spray Anti-Bark Dog Collar](#)

★★★★★ (203) **\$32.89**

Suggested by 1 customer

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[bark collar](#) (1)

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\$71.99



[Gentle Spray Anti-Bark Collar](#)
\$38.99



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★★★★★ (2) \$41.25



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★★★★☆ (11) \$45.96



[Gentle Leader SpraySense Citronella Spray Anti-Bark Collar](#)
\$32.88



[Premier Gentle Spray Anti-Bark Collar STARTER KIT](#)
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Customer Reviews

2 Reviews

5 star: (0)
4 star: (0)
3 star: (2)
2 star: (0)
1 star: (0)

Average Customer Review
★★★★☆ (2 customer reviews)

Share your thoughts with other customers:

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Most Helpful Customer Reviews

2 of 2 people found the following review helpful:

★★★★☆ **Don't forget replacement batteries....**,
March 3, 2008

By [J. Molley](#) (Seattle, WA) - [See all my reviews](#)

This item is great until the batteries die. They are extremely hard to find as they are weird camera battery size. Buy the refill too. The device is ok, but make sure you put it on the right way - read the directions carefully.

[Comment](#) | [Permalink](#) | Was this review helpful to you? [Yes](#) [No](#) ([Report this](#))

2 of 2 people found the following review helpful:

★★★★☆ **spray**, September 24, 2007

By [Catherine Chaney](#) - [See all my reviews](#)

Am finally getting the hang of the collar. Had to have it very tight because my dog has saggy skin and wasn't effective. Would have like the instructions to include something about that.

[Comment](#) | [Permalink](#) | Was this review helpful to you? [Yes](#) [No](#) ([Report this](#))

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This product's forum (0 discussions)

Discussion Replies Latest Post

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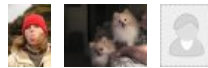
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anti-bark collar



Product Information from the Amapedia Community Beta ([What's this?](#))

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
PACIFIC DIVISION
SAN FRANCISCO, CALIFORNIA 94105

CHRIS CART
10061 RIVE
TOLUCA LAI
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